

1 Nicole Goodwin (SBN 024593)
2 **GREENBERG TRAURIG, LLP**
3 2375 East Camelback Road, Suite 700
Phoenix, Arizona 85016
4 Tel.: (602) 445-8000
goodwinn@gtlaw.com

5 Matthew A.C. Zapf (*pro hac vice*), (IL ARDC # 6197084)
6 Jonathan H. Claydon (*pro hac vice*), (IL ARDC # 6289235)
GREENBERG TRAURIG, LLP
7 77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
8 Tel.: (312) 456-8400
zapfm@gtlaw.com
claydonj@gtlaw.com

9 *Attorneys for Defendant Omron Corporation*

10 **IN THE UNITED STATES DISTRICT COURT**

11 **FOR THE DISTRICT OF ARIZONA**

12 IceMOS Technology Corporation,
13 Plaintiff/Counter-Defendant,
14 v.
15 Omron Corporation,
16 Defendant/Counter-Plaintiff.

Case No. 2:17-cv-02575-JAT

**OMRON CORPORATION'S
ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S
FIRST AMENDED COMPLAINT &
DEFENDANT OMRON
CORPORATION'S
COUNTERCLAIMS**

(JURY TRIAL DEMANDED)

19 Defendant/Counter-Plaintiff Omron Corporation ("Omron") hereby answers and
20 raises affirmative defenses to the First Amended Complaint (the "Complaint," ECF No.
21 14) filed by Plaintiff/Counter-Defendant IceMOS Technology Corporation ("IceMOS").
22 Omron further asserts the following counterclaims against IceMOS.

23 1. Plaintiff IceMOS Technology Corporation ("Plaintiff" or "IceMOS"), by
24 and through its undersigned counsel, files this First Amended Complaint against
25 Defendant Omron Corporation, as follows:

26 **ANSWER:** Omron admits that IceMOS has filed a complaint against Omron by
27 and through IceMOS's counsel. Omron denies that the complaint has any merit.

28

1 2. IceMOS is a Delaware corporation with its principal place of business at
2 7855 South River Parkway, #122, Tempe, Arizona 85284.

3 **ANSWER:** Omron admits the allegations in Paragraph 2.

4 3. Defendant Omron Corporation (“Omron”) is a corporation formed under
5 the laws of Japan with its principal place of business at Shiokoji Horikawa, Shimogyo-
6 ku, Kyoto 600-8530 Japan.

7 **ANSWER:** Omron admits the allegations in Paragraph 3.

8 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)
9 because this action is between a United States entity and a foreign entity and the matter
10 in controversy exceeds \$75,000.00.

11 **ANSWER:** Paragraph 4 contains conclusions of law to which no response is
12 required. To the extent a response is required, Omron denies that this Court properly has
13 jurisdiction over this action.

14 5. Arizona’s long-arm statute allows courts in this State to exercise
15 jurisdiction over nonresident defendants to the extent allowed by the Constitution.

16 **ANSWER:** Paragraph 5 contains conclusions of law to which no response is
17 required. To the extent a response is required, Omron does not dispute that Arizona’s
18 long-arm statute authorizes federal courts in Arizona to exercise jurisdiction over a
19 nonresident defendant if doing so would comport with constitutional principles of due
20 process.

21 6. This Court has personal jurisdiction over Omron because Omron has
22 purposefully directed activities and transactions towards Arizona and has availed itself
23 of the privilege of conducting business in Arizona; IceMOS’s claims arise out of and
24 relate to Omron’s activities in Arizona; and exercising specific jurisdiction over Omron
25 is reasonable.

26 **ANSWER:** Paragraph 6 contains conclusions of law to which no response is
27 required. To the extent a response is required, Omron denies the allegations in
28 Paragraph 6.

1 7. Specifically, Omron has engaged in a multi-year contractual relationship
 2 with IceMOS. IceMOS is an Arizona citizen that Omron has deliberately engaged in
 3 contractual activities with [sic].

4 **ANSWER:** Omron denies that the allegations in Paragraph 7 are sufficient to
 5 confer personal jurisdiction over Omron in this Court.

6 8. IceMOS has had its principal place of business in Tempe, Arizona since
 7 2004, which predates the parties' contacts by three years.

8 **ANSWER:** Omron lacks knowledge and information sufficient to form a belief
 9 regarding the location of IceMOS's principal place of business prior to the parties'
 10 contacts, and therefore denies the allegations in Paragraph 8.

11 9. In 2007, Omron approached IceMOS **in Arizona** to present Omron's
 12 foundry business to IceMOS. On numerous occasions, Omron personnel have visited
 13 IceMOS's headquarters in Tempe in furtherance of either obtaining IceMOS's business,
 14 or (after the parties entered their contract discussed below) to meet regarding their
 15 contractual relations. Such meetings occurred in at least 2007, 2011, 2012, 2013, and
 16 2015. The March 2015 meeting at which Omron purported to verbally give notice of
 17 termination of the IceMOS-Omron Supply Agreement dated February 28, 2011
 18 ("Supply Agreement") occurred at IceMOS headquarters in Tempe. (Emphasis in
 19 original.)

20 **ANSWER:** Omron admits visiting IceMOS in Tempe, Arizona once in 2011
 21 and twice in 2014 regarding production forecasts. Omron further admits visiting
 22 IceMOS in Tempe, Arizona in March 2015 and January 2017 to discuss the termination
 23 and transition of the Supply Agreement. Omron denies approaching IceMOS in Arizona
 24 in 2007 to present Omron's foundry business to IceMOS, as Omron instead presented
 25 its foundry business to a distinct entity named Great Wall Semiconductor ("GWS").
 26 Omron denies all other allegations in Paragraph 9.

27 10. Omron has further directed the following actions toward Arizona—all of
 28 which involve the business relationship upon which this lawsuit is based: (1) during the

1 course of Omron's relationship with IceMOS, Omron has shipped all production and
 2 engineering lots it manufactured for IceMOS to IceMOS's Arizona headquarters; (2)
 3 sent all planning requests to IceMOS's Arizona headquarters; (3) negotiated the Supply
 4 Agreement identified below with IceMOS's business representatives based in Arizona;
 5 (4) requested payment from IceMOS's Arizona headquarters and received payments
 6 from IceMOS's Bank of America Arizona account; (5) directed numerous emails and
 7 other correspondence to IceMOS in Arizona relating to the products that are the subject
 8 of the Supply Agreement at issue; (6) sent invoices and payment plans to IceMOS in
 9 Arizona; (7) called IceMOS president Sam Anderson in Arizona on many occasions to
 10 discuss the business relationship at issue.

11 **ANSWER:** Omron denies "directing" actions toward Arizona. Although Omron
 12 admits shipping an engineering sample to *GWS* in Arizona on one occasion in 2010,
 13 Omron denies shipping production and engineering lots to *IceMOS* in Arizona. Omron
 14 admits that IceMOS's business representatives are based in Arizona, but denies that the
 15 parties negotiated the Supply Agreement in Arizona. Omron admits to communicating
 16 with IceMOS representatives in Arizona, sending invoices and payment plans to
 17 IceMOS in Arizona, and receiving payments from IceMOS's Arizona bank account, but
 18 denies such allegations are sufficient to create personal jurisdiction. Omron denies all
 19 other allegations in Paragraph 10.

20 11. Omron has created continuing obligation [sic] between itself and IceMOS,
 21 a resident of this forum, by voluntarily entering into the Supply Agreement. All items
 22 manufactured by Omron under the Supply Agreement were deliverable to IceMOS in
 23 Arizona. Further, Omron has traveled to Arizona to meet with IceMOS and has made
 24 fraudulent representations and anticipatorily breached its obligations to IceMOS during
 25 such meetings.

26 **ANSWER:** Omron admits that IceMOS is a resident of Arizona and that Omron
 27 met with IceMOS in Arizona on a certain number of minimal occasions. Omron further
 28

1 admits that it voluntarily entered into the Supply Agreement. Omron denies all other
 2 allegations in Paragraph 11.

3 12. IceMOS's claims arise out of and relate to Omron's contacts with, and
 4 extra-contractual behavior directed to, Arizona. "A defendant has purposely availed
 5 himself of the benefits of a forum if he has deliberately engaged in significant activities
 6 within a State **or has created continuing obligations between himself and residents**
 7 **of the forum.**" *Gray & Co. v. Firstenberg Mach. Co.*, 913 F.2d 758, 760 (9th Cir. 1990)
 8 (emphasis added) (internal quotes omitted).

9 **ANSWER:** To the extent that Paragraph 12 quotes the Ninth Circuit's opinion
 10 in *Gray*, this paragraph contains legal conclusions to which no response is required.
 11 Omron denies all other allegations in Paragraph 12.

12 13. The Ninth Circuit applies a "but for" test for determining whether a
 13 plaintiff's cause of action arise [sic] out of the defendant's forum-related activities. *Id.*
 14 at 761. If Omron had not contracted with IceMOS to manufacture and deliver products
 15 to Arizona, IceMOS would not have been injured by Omron's breach of contract. See
 16 *id.* Likewise, if Omron had not traveled to Arizona and made false representations to
 17 IceMOS, IceMOS would not have been injured by Omron's fraud.

18 **ANSWER:** To the extent Paragraph 13 discusses the Ninth Circuit's
 19 jurisdictional standards or quotes the Ninth Circuit's opinion in *Gray*, this paragraph
 20 contains legal conclusions to which no response is required. Omron denies that it has
 21 breached the parties' contract and denies making false representations to IceMOS.
 22 Omron denies that IceMOS has been "injured" by any alleged breach of the Supply
 23 Agreement and denies that IceMOS has been "injured" by any alleged fraud. Omron
 24 further denies that the Court may validly exercise personal jurisdiction over Omron and
 25 denies all other allegations in Paragraph 13.

26 14. Exercise of jurisdiction over Omron is reasonable because Omron has
 27 purposefully availed itself of a contractual relationship with an Arizona citizen by its
 28 voluntary dealings with IceMOS. Because Omron is a foreign corporation, the burden of

1 litigating in this forum would not be substantially greater than in any other U.S. forum,
 2 nor is there a conflict between this forum's sovereignty and the sovereignty of another
 3 U.S. forum. Arizona has an interest in seeing that its residents are not misled by fraud or
 4 harmed by breaches of contract, and Arizona is an efficient forum for litigating this suit
 5 because many of the U.S. witnesses are in Arizona. See *id.* (listing factors for
 6 reasonableness of personal jurisdiction).

7 **ANSWER:** To the extent that Paragraph 14 cites the Ninth Circuit's opinion in
 8 *Gray*, this paragraph contains legal conclusions to which no response is required.
 9 Omron denies all other allegations in Paragraph 14.

10 15. Venue in this District is proper as to Omron under 28 U.S.C. § 1391(c)(3)
 11 because Omron is not a resident of the United States and may, therefore, be sued in any
 12 judicial district.

13 **ANSWER:** Paragraph 15 is a legal conclusion to which no response is required.
 14 To the extent a response is required, Omron denies that venue and jurisdiction are
 15 properly before this Court.

16 16. Founded in 2004, IceMOS offers and provides high quality super junction
 17 metal oxide semiconductor field-effect transistors ("Super Junction MOSFETs"),
 18 microelectromechanical systems ("MEMS") solutions, and advanced engineering
 19 substrates. It is a small privately held company with its headquarters in Tempe, Arizona
 20 and operations in Belfast, Northern Ireland and Japan.

21 **ANSWER:** Omron admits that IceMOS offers Super Junction MOSFETs, and
 22 admits that IceMOS has its headquarters in Tempe, Arizona and operations in Belfast,
 23 Northern Ireland, and Japan. Omron lacks knowledge and information sufficient to form
 24 a belief as to the truth of the remaining allegations in Paragraph 16, and therefore denies
 25 the same.

26 17. Omron is an 86-year old Japanese company founded by Kasuma Tateisi.
 27 Omron claims its corporate culture can be summarized by Tateisi's favorite phrase,

1 “Don’t just say ‘I can’t.’ Try and find a way to do it.” As detailed below, Omron did not
 2 apply that spirit to its relationship with IceMOS.

3 **ANSWER:** Omron admits it is a Japanese company founded by Kasuma Tateisi.
 4 Omron denies all other allegations in Paragraph 17.

5 18. In 2007, Omron purchased a wafer fabrication facility in Yasu, Japan (the
 6 “Yasu Fab”) that fabricated 200mm complementary metal-oxide semiconductor
 7 (CMOS) wafers with a 50,000 wafer/month capacity. Omron offered contract
 8 manufacturing services to utilize extra capacity above what it needed for internal
 9 customers and its external expansion. Omron’s general manager Yoshio Sekiguchi
 10 approached IceMOS and Great Wall Semiconductor (GWS) to be customers of the Yasu
 11 Fab. Both IceMOS and GWS ultimately entered supply agreements with Omron.

12 **ANSWER:** Omron admits that its asset purchase of the Yasu Fab was
 13 consummated in 2007 and admits that it offered contract manufacturing services to
 14 utilize extra capacity above what it needed for internal customers and its external
 15 expansion. Omron denies that the Yasu Fab “fabricated 200mm complementary metal-
 16 oxide semiconductor (CMOS) wafers with a 50,000 wafer/month capacity”; the Yasu
 17 Fab instead employed an *8-inch* CMOS production line with a *10,000* wafer/month
 18 capacity. Omron denies that Mr. Sekiguchi approached IceMOS to be a customer of the
 19 Yasu Fab; instead, IceMOS representative Raymond Wiley approached Omron on
 20 October 12, 2006 to propose potential business transactions between Omron and
 21 IceMOS. Omron further denies that Mr. Sekiguchi approached GWS to be a customer
 22 of the Yasu Fab; instead, a Japanese marketing consultant introduced GWS to Mr.
 23 Sekiguchi. Omron admits that both IceMOS and GWS ultimately entered supply
 24 agreements with Omron. Omron denies all other allegations in Paragraph 18.

25 19. When it solicited IceMOS’s business, Omron knew IceMOS was a small
 26 company with no meaningful ability to shift production facilities from the Yasu Fab and
 27 no ability to qualify a second source of production for wafer fabrication simultaneously
 28 with designing, engineering, and producing products at Omron’s Yasu Fab. Simply

1 stated, Omron knew that it would be IceMOS's sole supplier of wafer fabrication
 2 services.

3 **ANSWER:** Omron denies the allegations in Paragraph 19.

4 20. From 2008 through 2011, IceMOS and Omron had a customer-supplier
 5 relationship. During this time, IceMOS began designing and developing its Super
 6 Junction MOSFETs for manufacture at the Yasu Fab.

7 **ANSWER:** Omron denies that its relationship with IceMOS from 2008 and
 8 2011 was that of "customer and supplier." On information and belief, Omron admits
 9 that during this time, IceMOS began designing and developing its Super Junction
 10 MOSFETs.

11 21. The sales cycle for microelectronic components like Super Junction
 12 MOSFETs is long and complex. IceMOS Super Junction MOSFETs are "designed into"
 13 customers' end products (e.g. power supplies and light ballasts). The process includes
 14 the customer providing functional specifications, size or package requirements and
 15 interoperability conditions.

16 **ANSWER:** Omron denies the allegations in Paragraph 21.

17 22. Because of the detailed selling process, marketing Super Junction
 18 MOSFETs requires extensive work with customers. This work is done by
 19 sales/application engineers who work closely with the fabrication facility's engineers.
 20 The work needed just to start products into production—design work, application
 21 compatibility, fine-tuning with the fabrication facility and customer, creating and
 22 adjusting mask sets, producing and qualifying samples, process engineering—takes up
 23 to **three years**. IceMOS performs this work for customer devices that have multi-year
 24 life cycles. Once IceMOS wins a design battle to have its products included in a device,
 25 it must commit to the customer that it can continuously supply the devices for the
 26 expected life of the products in which they are used. (Emphasis in original.)

27 **ANSWER:** Omron denies the allegations in Paragraph 22.

LAW OFFICES
GREENBERG TRAURIG
 2375 EAST CAMELBACK ROAD, SUITE 700
 PHOENIX, ARIZONA 85016
 (602) 445-8000

1 23. The foundry where semiconductors are manufactured is critical for a
 2 semiconductor company like IceMOS. IceMOS's customers will only approve and
 3 purchase products produced at fabrication facilities that the customers have qualified for
 4 making products for the customers' finished devices. Once a semiconductor company's
 5 foundry has been approved by customers, the semiconductor company needs the
 6 foundry to continue manufacturing products. This is why, even if the semiconductor
 7 company and foundry manifest an intent to cease mutual operations, the semiconductor
 8 company needs the foundry to continue supplying products until a new foundry has
 9 been located, manufacturing processes transferred, the new foundry proves it can make
 10 products with sufficient yields, and the customers qualify the new foundry under their
 11 own policies and procedures. Thus, withdrawal from a foundry agreement requires the
 12 foundry and semiconductor company to work together to ensure the semiconductor's
 13 customers obtain the products they need.

14 **ANSWER:** Omron lacks knowledge and information sufficient to form a belief
 15 regarding IceMOS's customers' approval of or purchase from foundries, and therefore
 16 denies allegations concerning the same. Omron denies all other allegations in Paragraph
 17 23.

18 24. When customers choose IceMOS, they contract for an uninterrupted
 19 supply of IceMOS Super Junction MOSFETs for a period that extends continuously into
 20 the future for the life of the customer's device. Failure to meet customer demand means
 21 that if IceMOS is the first source for the customer's needs, it will be replaced by a
 22 second source until it could meet production needs (and if the customer would accept
 23 IceMOS products after a supply gap). If IceMOS is the second source of the customer's
 24 requirements because it is filling in another supplier's inability to fulfill the customer's
 25 orders, and IceMOS has a supply gap, it will simply be replaced by the customer and
 26 not used again.

27 **ANSWER:** Omron lacks knowledge and information sufficient to form a belief
 28 concerning IceMOS's contracts with its customers or any related allegations in

1 Paragraph 24, and therefore denies the same. Omron denies all other allegations in
 2 Paragraph 24.

3 25. Supply chain problems are anathema to IceMOS, which serves the power
 4 management industry. IceMOS must work with its customers to design and qualify
 5 IceMOS products for use in customer systems. One missed shipment or delivery
 6 problem can undo thousands of man-hours worth of work to obtain a design win.

7 **ANSWER:** Omron lacks knowledge and information sufficient to form a belief
 8 concerning IceMOS's supply-chain problems, interaction with customers on its design
 9 process, or shipment and delivery of customer goods, and therefore denies the same.
 10 Omron denies all other allegations in Paragraph 25.

11 26. The cycle time for running a production lot of MOSFET wafers exceeds 7
 12 months. To order and receive raw materials takes three months, Omron's processing of
 13 the raw materials takes another three months, and then IceMOS and Omron need 4-6
 14 weeks to test and assemble the products for the customers. For an engineering lot
 15 (which is used for testing and design-in work and creating samples for marketing to
 16 customers), the process requires an additional four weeks.

17 **ANSWER:** Omron denies the allegations in Paragraph 26.

18 27. What IceMOS describes above is the basic nature of how the
 19 microelectronics industry works. Omron had actual knowledge of IceMOS's product
 20 cycles from design to production when Omron solicited IceMOS in 2007 and when it
 21 entered the Supply Agreement. Omron has had extensive consultation and interaction
 22 with IceMOS's engineers and principles [sic] throughout the decade-long course of the
 23 parties' dealings. And Omron has been in the electronics business for nearly a century,
 24 therefore it has full knowledge of the nature of IceMOS's products and the Yasu Fab's
 25 critical importance to IceMOS's ability to meet its own customer obligations.

26 **ANSWER:** Omron admits that it has "been in the electronics business for nearly
 27 a century." Omron denies all other allegations in Paragraph 27.

1 28. On February 28, 2011, IceMOS and Omron entered into the Supply
 2 Agreement for Omron to fabricate and supply semiconductor wafers for IceMOS's
 3 Super Junction MOSFETs. A true and correct copy of said Supply Agreement is
 4 attached hereto as "Exhibit 1" and is incorporated by reference as if fully set forth
 5 herein.

6 **ANSWER:** Omron admits the allegations in Paragraph 28. Omron further
 7 admits that the document designated as Exhibit 1 to the Complaint is a true and correct
 8 copy of the Supply Agreement.

9 29. The intent of the Supply Agreement was to provide IceMOS with a
 10 reliable and consistent supply of wafers for its Super Junction MOSFETs to allow
 11 IceMOS to develop super junction platforms and meet growing demand by timely
 12 delivering products from those platforms to its customers.

13 **ANSWER:** Omron denies the allegations in Paragraph 29, as they are
 14 inconsistent with the "Recitals" section of the Supply Agreement. That section, which
 15 speaks for itself, states that Omron's intent in entering the Supply Agreement was
 16 instead to "expand its' [sic] customer base."

17 30. To that end, in the Supply Agreement, Omron agreed to (1) "perform the
 18 fabrication requested by IceMOS"; (2) "share equally in the production mask costs
 19 (initial sets) applicable to the products listed in Exhibit A and future products"; and (3)
 20 "fully resource the development of all generations of Super Junction MOSFETs"
 21 through the duration of the Supply Agreement. Supply Agreement, §§ 2.0, 4.0, & 4.2.1.

22 **ANSWER:** Omron denies any allegations in Paragraph 30 inconsistent with the
 23 language of the Supply Agreement, which speaks for itself.

24 31. From their negotiations of the Supply Agreement, Omron knew that
 25 IceMOS depended upon Omron to support IceMOS's business due to the global dearth
 26 of fabrication facilities that could support IceMOS's manufacturing requirements.
 27 IceMOS has developed two generations of Super Junction MOSFETs at the Yasu Fab.

1 While developing these products, IceMOS has created substantial intellectual property,
 2 including approximately 50 patents.

3 **ANSWER:** Omron admits that IceMOS had developed two generations of
 4 Super Junction MOSFETs at the Yasu Fab, but denies any alleged dependence on it by
 5 IceMOS due to any purported shortage of fabrication facilities to support IceMOS's
 6 manufacturing requirements. Omron lacks knowledge and information sufficient to
 7 form a belief regarding the truth of the remaining allegations in Paragraph 31, and
 8 therefore denies the same.

9 32. IceMOS dedicated a team of Japanese engineers to work with Omron to
 10 develop the high voltage Super Junction MOSFET technology, and improve yields in
 11 processing—the cost to IceMOS of this engineering capacity was \$600,000 per year.
 12 IceMOS further invested in the Omron relationship by purchasing silicon wafers for
 13 development and production, and by purchasing mask sets from Omron.

14 **ANSWER:** Omron admits that IceMOS dedicated a team of Japanese engineers
 15 to work with Omron and further admits that IceMOS purchased silicon wafers for
 16 development and production and mask sets. Omron lacks knowledge and information
 17 sufficient to form a belief regarding the annual costs IceMOS incurred, and therefore
 18 denies allegations related to the same.

19 33. Because the global availability of fabrication facilities like Omron's Yasu
 20 Fab is so low, and the design-to-production time for IceMOS's products is long, the
 21 Supply Agreement term is 10 years and early termination could only be effectuated
 22 upon three years' **written** notice, including one year of support to transfer production to
 23 another wafer fabrication facility before termination. The transition year is not separate
 24 from the three-year period where production and product development and support
 25 continue until termination. The transition work must continue in parallel while Omron
 26 continues to fulfill its obligations to make products and support research and
 27 development. Supply Agreement §§ 6.0, 6.2. (Emphasis in original.)

28

1 **ANSWER:** Omron admits that the ordinary term of the Supply Agreement
 2 would have been ten years had Omron not validly exercised its termination options
 3 under the Supply Agreement. Omron denies all other allegations in Paragraph 33.
 4 Section 6.2 of the Supply Agreement, which speaks for itself, explicitly provides that
 5 “either party can terminate this Agreement without any cause and liability by giving a
 6 written notice to the other Party at least three (3) years, ***which include one (1) year***
 7 ***period of transfer to other wafer fabrication facilities,*** prior to termination.” Supply
 8 Agreement § 6.2 (emphasis added). Thus, the three-year termination period includes
 9 two years of ordinary performance under the Supply Agreement followed by one year
 10 of transfer to other wafer fabrication facilities.

11 34. To enable Omron to support IceMOS’s contracted-for 3,500 wafer/month
 12 capacity, IceMOS agreed to purchase a deep reactive ion etcher (DRIE) necessary for
 13 Super Junction MOSFET manufacturing, which cost IceMOS \$1,235,666 to purchase
 14 and \$112,000 for installation. IceMOS agreed to pay the expenses necessary to install
 15 the DRIE in the Yasu Fab. Supply Agreement § 4.14. The DRIE was configured for use
 16 in Japan and IceMOS cannot use it at any facility outside Japan until it is substantially
 17 modified. Omron has refused to purchase the DRIE and has refused to help IceMOS to
 18 ship it outside Japan.

19 **ANSWER:** Omron denies that IceMOS “agreed” to purchase the DRIE etcher
 20 and pay the expenses necessary to install the DRIE in the Yasu Fab “to enable Omron to
 21 support IceMOS’s contracted-for 3,500 wafer/month capacity”; instead, IceMOS
 22 voluntarily purchased the DRIE etcher of its own volition. Answering further, and as
 23 set forth in detail below in its Counterclaim, Omron affirmatively states that IceMOS
 24 fraudulently and/or recklessly inflated the forecast for monthly wafers and ordered only
 25 2.2% of the forecasted amount over the life of the contract. Omron denies that IceMOS
 26 cannot use the DRIE etcher at any facility outside Japan, as the DRIE is suitable for use
 27 outside of Japan with minor modifications. Omron lacks knowledge and information
 28 sufficient to form a belief regarding the costs IceMOS voluntarily paid to purchase and

1 install the DRIE etcher, and therefore denies allegations concerning the same. Omron
 2 admits that it has refused to purchase the DRIE or ship the DRIE outside of Japan, but
 3 denies it is under any legal obligation to do so. Omron denies all other allegations in
 4 Paragraph 34.

5 35. Omron further agreed to take all preventive measures necessary to provide
 6 continuous supply to IceMOS. Supply Agreement § 4.15, Ex. H.

7 **ANSWER:** Section 4.15 of the Supply Agreement, which speaks for itself, does
 8 not require Omron to “take *all* preventive measures necessary to provide continuous
 9 supply” as IceMOS insists; instead, the Supply Agreement only requires Omron to “take
 10 all preventive measures *listed in Exhibit H* necessary to provide continuous supply to
 11 IceMOS during the term of this AGREEMENT.” Supply Agreement § 4.15 (emphasis
 12 added). Thus, Omron did not agree to take any preventive measures not listed in Exhibit
 13 H of the Supply Agreement. Omron therefore denies the allegations in Paragraph 35 to
 14 the extent they are inconsistent with the plain language of the Supply Agreement.

15 36. It took four years of the 10-year Supply Agreement’s term, and
 16 tremendous efforts by IceMOS in design, development and engineering, for Omron to
 17 finally obtain a 75% wafer yield on IceMOS’s first generation (GEN1) Super Junction
 18 MOSFET products. Even the best manufacturing Omron could achieve resulted in
 19 Super Junction MOSFET wafers with 25% of the die on them useless.

20 **ANSWER:** Omron denies the allegations in Paragraph 36.

21 37. Upon information and belief, in 2015 Omron’s new president determined
 22 that acquiring the Yasu Fab was a mistake. Despite its long-term contracts with GWS
 23 and IceMOS, Omron now wanted to exit the contract manufacturing business and
 24 redirect the engineers and capacity to Omron’s internal customers.

25 **ANSWER:** Omron denies the allegations in Paragraph 37.

26 38. The Supply Agreement requires that all notices under the agreement “be
 27 in writing and delivered personally or via facsimile or via registered or certified mail” to
 28 the party’s address listed in the agreement. Supply Agreement, § 9.4. Omron never

1 provided IceMOS with notice of its intent to terminate the Supply Agreement that meets
 2 the § 9.4 requirements.

3 **ANSWER:** Omron admits that Section 9.4 of the Supply Agreement, which
 4 speaks for itself, contains the language quoted above. Omron denies the allegations in
 5 Paragraph 38 to the extent they are inconsistent with the Supply Agreement's plain
 6 language. Omron denies that it failed to provide IceMOS a termination notice that
 7 satisfied the requirements of Section 9.4, as Omron representative Yoshitake Ito
 8 personally delivered a copy of a printed power point presentation stating that the Supply
 9 Agreement was terminated to IceMOS representative Samuel Anderson on
 10 March 6, 2015.

11 39. The design-in process for IceMOS's Super Junction MOSFETs is
 12 complex. IceMOS products need to be designed to meet the needs of customers. The
 13 process requires designing prototypes, testing samples, ensuring applications work with
 14 the MOSFETs, fine tuning the process with the fabrication facility and customer and
 15 repeating as necessary to create the final production design. This is a normal process for
 16 microelectronic component suppliers and their fabrication facilities.

17 **ANSWER:** Omron lacks knowledge and information sufficient to form a belief
 18 concerning IceMOS's design-in process or any related allegations in Paragraph 39, and
 19 therefore denies the same. Omron denies all other allegations in Paragraph 39.

20 40. IceMOS moved its fabrication work to Omron because of the support
 21 Omron initially offered and later promised, which included engineering services and the
 22 availability of engineering lots in numbers sufficient to support the research and
 23 development of multiple generations of Super Junction MOSFET products. IceMOS
 24 would use engineering lots (12 wafers) to work on product designs. The Supply
 25 Agreement did not place limits on engineering lots that IceMOS could use to design and
 26 test its products. Instead, Omron had to supply all engineering lots necessary to create
 27 the Super Junction MOSFETs IceMOS was developing.

28 **ANSWER:** Omron denies the allegations in Paragraph 40.

1 41. In late 2012, after IceMOS had consigned the DRIE etcher to Omron and
 2 had commenced work on its GEN1 products, Omron severely limited IceMOS's use of
 3 engineering lots to just 3 lots per month. This constituted a 90% reduction in the amount
 4 IceMOS needed to prepare its products and forced IceMOS to purchase production lots
 5 for use as engineering lots and send specific instructions to Omron for each lot's
 6 processing to obtain the testing and product review Omron had previously indicated
 7 would cost IceMOS nothing. Despite Omron's decision, which thwarted the purpose of
 8 the Supply Agreement, IceMOS had to remain with Omron because there were no
 9 alternative fabrication facilities in Japan and IceMOS had committed all available
 10 capital resources to fulfilling its obligations under the Supply Agreement.

11 **ANSWER:** Omron admits that the parties reduced the number of engineering
 12 lots to three lots per month; however, IceMOS and Omron mutually agreed to that
 13 limitation. Omron denies all other allegations in Paragraph 41.

14 42. Omron thwarted the intent of the parties by reducing its engineering
 15 budget to just 10% of its original commitment to IceMOS after IceMOS purchased the
 16 DRIE and started Super Junction MOSFET development into the Yasu fabrication
 17 facility. This support reduction caused Omron's ongoing inability to obtain adequate
 18 yields. It also contributed to numerous process and manufacturing problems that
 19 resulted in low-quality products from Omron. Only in 2015 did Omron's production on
 20 IceMOS's first generation products (GEN1) reach the minimally acceptable 75% yield
 21 threshold to commence high-volume production, which was at least two years later than
 22 what would have occurred if Omron had not curtailed its engineering budget and instead
 23 had fulfilled its obligations as originally promised.

24 **ANSWER:** Omron denies the allegations in Paragraph 42.

25 43. These delays caused by Omron's actions that denied IceMOS the fruits of
 26 the Supply Agreement cost IceMOS millions of dollars in development time, destroyed
 27 or prevented relationships with customers who should have had qualified products years
 28 earlier, and severely devalued IceMOS's contemplated IPO because the Super Junction

1 MOSFET sales have been stalled and impeded. Ultimately, Omron severely constrained
 2 IceMOS's ability to develop its Super Junction MOSFET business, which cost IceMOS
 3 years of product sales prior to Omron's breach and into the future.

4 **ANSWER:** Omron denies the allegations in Paragraph 43.

5 44. IceMOS has started bringing up its second generation of Super Junction
 6 MOSFETs (GEN2) at contract manufacturer Phenitec Semiconductor Corporation
 7 (Phenitec). Omron has removed substantially all resources from supporting IceMOS and
 8 its GEN2 products, which impairs IceMOS's ability to supply customers while IceMOS
 9 transfers its GEN2 production from Omron to Phenitec.

10 **ANSWER:** Omron lacks knowledge and information sufficient to form a belief
 11 regarding IceMOS's development of a second generation of Super Junction MOSFETs
 12 or relationship with Phenitec Semiconductor Corporation, and therefore denies the
 13 same. Omron denies all other allegations in Paragraph 44.

14 45. Omron's failure to support IceMOS's customers and concurrently fulfill
 15 its obligations to transfer IceMOS product fabrication to other wafer facilities has
 16 caused additional damages. Such failures include Omron's refusal to purchase for itself
 17 or assist IceMOS in transferring IceMOS's DRIE etcher, Omron's removal of resources
 18 to support IceMOS in transferring its GEN1 production to a new fabricator, Omron's
 19 denying IceMOS the ability to continue design-in work for GEN1 customers during the
 20 transition of fabrication services from Omron to a new wafer fabrication, Omron's
 21 denying IceMOS the ability to complete GEN2 product development during the Supply
 22 Agreement term, Omron's refusal to ensure continued supply of fabrication services
 23 during IceMOS's transition to a subsequent facility by failing to maintain adequate end-
 24 of-life inventory of IceMOS Super Junction MOSFETs, and Omron's failure to assist
 25 IceMOS in obtaining alternative fabrication arrangements.

26 **ANSWER:** Omron denies the allegations in Paragraph 45.

27 46. On March 6, 2015, Omron met with IceMOS in Phoenix, Arizona and
 28 through a non-officer employee **orally** indicated that Omron intended to close its Yasu

1 Fab at the end of March 2017, and therefore that Omron would not accept any new
 2 orders from IceMOS after December 31, 2016. Omron made no unequivocal statement
 3 that it would not honor the Supply Agreement in some way, only that the Yasu Fab was
 4 closing and no orders would be accepted that could not be completed by the end of
 5 March. (Emphasis in original.)

6 **ANSWER:** Omron admits that, on March 6, 2015, Omron representative
 7 Yoshitake Ito met with IceMOS representative Samuel Anderson in Phoenix, Arizona
 8 and informed Mr. Anderson that Omron was exercising the Supply Agreement's early
 9 termination clause. Omron denies that it only delivered this information "orally";
 10 Omron also conveyed written notice of termination to Mr. Anderson on this same date.
 11 Omron denies all other allegations in Paragraph 46.

12 47. IceMOS did not accept the statement from Omron's employee or
 13 acknowledge in any way that the Supply Agreement had been or could be terminated
 14 without following the Supply Agreement's express terms. IceMOS never accepted any
 15 oral termination and never acknowledged that the Supply Agreement was no longer in
 16 full force and effect.

17 **ANSWER:** Omron denies that it failed to "follow the Supply Agreement's
 18 express terms" with respect to early termination and denies that it failed to provide Mr.
 19 Anderson with written notice of termination. Omron denies all other allegations in
 20 Paragraph 47.

21 48. The Supply Agreement's [sic] requires a termination notice in written
 22 form providing three years [sic] notice and full compliance right up to the end date. The
 23 Supply Agreement additionally requires that during the last year – while Omron
 24 continues to meet its manufacturing, engineering and other support obligations – it **also**
 25 must cooperate and support transition to another wafer fabrication facility. Supply
 26 Agreement, § 6.2. (Emphasis in original.)

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1 **ANSWER:** Omron denies the allegations in Paragraph 48. Section 6.2 of the
 2 Supply Agreement, which speaks for itself, provides that the three-year early
 3 termination period includes a one-year wind-down period.

4 49. Omron did not deliver written notice to IceMOS during the March 6, 2015
 5 meeting. Further, Omron's employee, Yoshitake Ito, recognized that the discussed
 6 factory shutdown date did not comply with the three-year notice requirement in the
 7 Supply Agreement, even if Omron had provided notice in compliance with the Supply
 8 Agreement.

9 **ANSWER:** Omron denies that it "did not deliver written notice to IceMOS
 10 during the March 6, 2015 meeting," as Omron representative Yoshitake Ito personally
 11 delivered a written termination notice to IceMOS representative Samuel Anderson on
 12 that date. Omron denies all other allegations in Paragraph 49.

13 50. The March 6, 2015 meeting discussions of a potential Yasu Fab shutdown
 14 did not constitute proper notice of early termination because the intended shut down
 15 date was March 6, 2017, less than three years from the date of the meeting.

16 **ANSWER:** Omron denies the allegations in Paragraph 50. Section 6.2 of the
 17 Supply Agreement provides that the three-year early termination period includes a one-
 18 year wind-down period, and Omron's notice of termination, which IceMOS did not
 19 object to at that time, contemplated an inventory buildup that would see IceMOS
 20 through the final transition year.

21 51. The March 6, 2015 meeting further did not constitute proper notice of
 22 early termination because the notice of termination was not in writing and delivered
 23 personally or via facsimile or via registered or certified mail.

24 **ANSWER:** Omron denies the allegations in Paragraph 51. Omron
 25 representative Yoshitake Ito personally delivered a written termination notice to
 26 IceMOS representative Samuel Anderson during the March 6, 2015 meeting.

1 52. The March 6, 2015 meeting further did not constitute proper notice of
 2 early termination because the notice of termination was not communicated by an
 3 officer, director or other person with any authority to terminate the Supply Agreement.

4 **ANSWER:** Omron denies the allegations in Paragraph 52. The Supply
 5 Agreement, which speaks for itself, does not require termination notice to be
 6 communicated by an officer, director, or other person with authority. *See Supply*
 7 *Agreement §§ 6.2 and 9.4.* Omron denies all allegations inconsistent with the language
 8 of the Supply Agreement. Omron further denies that Mr. Ito lacked authority to
 9 communicate Omron's termination of the Supply Agreement.

10 53. Omron confirmed its own failure to comply with the notice requirements
 11 for early termination during a meeting between Omron and IceMOS on December 9,
 12 2015. Omron's meeting minutes, which Mr. Ito sent by email to IceMOS president Sam
 13 Anderson, stated:

14 *IcMOS [sic] will request Omron to change payment terms for the inventory
 15 build because Omron terminate [sic] one year advanced, Omron officially
 16 informed IceMOS of the termination in Mar. 2015. Though supply
 agreement shows at least three years required prior to termaination [sic],
 Omron stated to terminate on Mar. 31, 2017. It's not three years but two
 years.*

17 **ANSWER:** Omron admits that the December 9, 2015 meeting minutes contain
 18 the language quoted above, which reflect the comments made by Mr. Anderson and in
 19 no way reflect or constitute the position of Omron. Omron denies all other allegations
 20 contained in Paragraph 53.

21 54. A true and correct copy of said meeting minutes is attached hereto as
 22 "Exhibit 2" and is incorporated by reference as if fully set forth herein. Thus, Omron
 23 has acknowledged that its faulty effort at termination is, even if accepted as a
 24 termination, in breach of the Supply Agreement. The meeting minutes also do not
 25 constitute proper notice of termination because Omron did not furnish them as required
 26 by the terms of the Supply Agreement.

1 **ANSWER:** Omron admits that Exhibit 2 to the Complaint is a true and correct
 2 copy of the meeting minutes and refers to its response to Paragraph 53. Omron denies
 3 all other allegations in Paragraph 54.

4 55. At both the March 6, 2015 meeting and the December 9, 2015 meeting,
 5 Omron falsely represented its intent to fully support IceMOS's Super Junction
 6 MOSFETs throughout the "termination period" that Omron had proposed but for which
 7 it had not issued written notice. Such support has not occurred. The promises of
 8 uninterrupted service and support until March 2017 were made to induce IceMOS to
 9 accept an early termination based upon assurances the transition would be handled in a
 10 way that would prevent any additional harm to IceMOS. Omron knew IceMOS had no
 11 other viable options.

12 **ANSWER:** Omron denies the allegations in Paragraph 55.

13 56. As of the date of the Original Complaint in this matter, Omron had not
 14 provided proper written notice to IceMOS sufficient to trigger the early termination
 15 provision of the Supply Agreement. IceMOS has never accepted the oral termination as
 16 proper. This is a material breach of the Supply Agreement.

17 **ANSWER:** Omron denies the allegations in Paragraph 56.

18 57. Omron has further breached the Supply Agreement by actions and
 19 inaction other than its breach of the early termination provision.

20 **ANSWER:** Omron denies the allegations in Paragraph 57.

21 58. First, Omron has failed to ship one or more IceMOS orders. The Supply
 22 Agreement requires lead time of no more than 10 weeks for products with fewer than 15
 23 photo layers. Supply Agreement § 4.11. A shipment scheduled to ship on August 5,
 24 2016, which had a lead time of 10 weeks, did not ship until October 14, 2016. The delay
 25 occurred because Omron failed to exercise proper process control and had to replace a
 26 failed process run. IceMOS lost the customer due to Omron's fabrication failure and
 27 sought to return the late product because the customer had switched to an IceMOS

1 competitor. Omron did not credit IceMOS for the failed process run and instead claimed
 2 an outstanding invoice for the rejected product.

3 **ANSWER:** Omron admits that Section 4.11 of the Supply Agreement, which
 4 speaks for itself, provides that “Production lead time will not exceed ten (10) weeks for
 5 the products which have less than fifteen (15) photo layers.” Omron denies all
 6 allegations in Paragraph 58 inconsistent with the plain terms of the Supply Agreement.
 7 Omron denies all other allegations in Paragraph 58. Omron shipped the lots that were
 8 scheduled to ship on August 5, 2016, on October 12, 2016 and October 21, 2016
 9 pursuant to IceMOS’s direction. The shipping delay occurred in part because IceMOS
 10 itself directed Omron to delay the production process. Omron incorporates the
 11 allegations raised in its Counterclaims below to its answer to Paragraph 58.

12 59. Second, Omron failed to ensure continuous uninterrupted supply despite §
 13 4.15 of the Supply Agreement and its Exhibit H.

14 **ANSWER:** Omron denies the allegations in Paragraph 59, and denies all
 15 allegations in Paragraph 59 inconsistent with the plain terms of the Supply Agreement,
 16 which speak for themselves.

17 60. Third, Omron has rejected the return of unusable wafers rejected by
 18 IceMOS.

19 **ANSWER:** Omron denies the allegations in Paragraph 60. Answering further,
 20 Omron states that Section 4.9 of the Supply Agreement does not permit IceMOS to
 21 return “unusable” wafers, but only permits IceMOS to reject lots that are “found to fail
 22 the ‘Design Specification’ per Exhibit A for a given device title.” Supply Agreement
 23 § 4.9.

24 61. Fourth, Omron has refused to accept new purchase orders from IceMOS,
 25 in violation of, inter alia, §§ 2.0, 4.15 and 6.2 of the Supply Agreement.

26 **ANSWER:** Omron denies the allegations in Paragraph 61.

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1 62. Fifth, Omron has refused to effectuate a sufficient inventory build to
 2 service IceMOS during the transition of fabrication services from Omron's Yasu Fab to
 3 a subsequent fabrication facility in violation of § 6.2 of the Supply Agreement.

4 **ANSWER:** Omron denies the allegations in Paragraph 62.

5 63. Since meeting with Omron and learning of Omron's intent to terminate
 6 the Supply Agreement, IceMOS has maintained that Omron is not permitted to
 7 terminate the Supply Agreement and must continue to support the design, development,
 8 and manufacture of IceMOS's Super Junction MOSFETs for at least three years after
 9 proper termination notice.

10 **ANSWER:** Omron denies the allegations in Paragraph 63.

11 64. Nonetheless, in a good faith endeavor to minimize/mitigate any potential
 12 damages, and in reliance upon Omron's representations regarding ongoing support
 13 during the termination period, IceMOS has negotiated with Omron to resolve the
 14 termination issue and has attempted to find alternative facilities to meet its
 15 manufacturing demands.

16 **ANSWER:** Omron lacks sufficient information regarding whether IceMOS has
 17 "attempted to find alternative facilities to meet its manufacturing demands," and
 18 therefore denies such allegations. Omron denies that IceMOS has "negotiated with
 19 Omron" in "good faith," as IceMOS has made unreasonable, unjustifiable, and
 20 unacceptable demands that Omron purchase the DRIE etcher and pay IceMOS \$3
 21 million. Omron denies all other allegations in Paragraph 64.

22 65. Given the term of the Supply Agreement and the nature of semiconductor
 23 fabrication, IceMOS developed the manufacturing processes for its Super Junction
 24 MOSFETs specifically for Omron's wafer manufacturing facility and equipment.

25 **ANSWER:** Omron denies the allegations in Paragraph 65.

26 66. Despite its best efforts, IceMOS has been unable to identify a comparable
 27 manufacturing facility with adequate supply capability or capacity that will not cause
 28 substantial delay, costs, and further loss to IceMOS.

1 **ANSWER:** Omron lacks knowledge and information sufficient to form a belief
 2 as to the truth of the allegations in Paragraph 66, and therefore denies the same.

3 67. Additionally, IceMOS has learned that the DRIE etcher that it purchased
 4 at Omron's insistence and consigned to Omron's facility cannot be transferred and
 5 supported outside of Japan, severely limiting IceMOS's options for alternative
 6 manufacturers without the substantial loss of the millions of dollars invested in the
 7 purchase and installation of the DRIE etcher.

8 **ANSWER:** Omron denies that IceMOS purchased the DRIE etcher "at Omron's
 9 insistence"; IceMOS purchased the DRIE etcher of its own volition. Omron denies that
 10 the DRIE etcher cannot be transferred or supported outside of Japan, as the DRIE etcher
 11 is suitable for use outside of Japan with minor modifications. Omron denies all other
 12 allegations in Paragraph 67.

13 68. Recognizing its failure to comply with the three-year notice period or its
 14 obligations to continue to fully support IceMOS during a transition, Omron has since
 15 shifted its intended termination date to March 6, 2018, which is still fewer than three
 16 years from the first possible written notice date.

17 **ANSWER:** Omron denies that it has failed to comply with the three-year notice
 18 period or its obligations under the Supply Agreement, and therefore denies that it has
 19 "recogniz[ed]" any alleged failure to do either. Omron denies all other allegations in
 20 Paragraph 68.

21 69. Such shift also violates the Supply Agreement because the March 6, 2018
 22 date Omron decided upon is less than three years from the time Omron indicated its
 23 intent to terminate on that date.

24 **ANSWER:** Omron denies the allegations in Paragraph 69.

25 70. The March 6, 2018 date for termination is in further violation of the
 26 Supply Agreement because Omron has not provided IceMOS with notice in writing and
 27 delivered personally or via facsimile or via certified or registered mail.

28 **ANSWER:** Omron denies the allegations in Paragraph 70.

1 71. Nonetheless, Omron now maintains an intent to terminate the Supply
 2 Agreement as of March 6, 2018. But Omron has provided no assurances to IceMOS that
 3 it will fully support new product development with engineering lots or provide the
 4 necessary level of engineering support.

5 **ANSWER:** Omron denies the allegations in Paragraph 71.

6 72. Despite its covenant to fully resource the development of IceMOS's Super
 7 Junction MOSFETs, no later than early 2014, Omron began to redirect engineering
 8 resources from IceMOS's development activities to Omron's internal business
 9 activities. In so doing, Omron failed to ensure that it could continue to supply 3,500
 10 wafers/month as required by the Supply Agreement.

11 **ANSWER:** Omron denies the allegations in Paragraph 72.

12 73. Omron's reduction of support for IceMOS has been ongoing and has
 13 worsened from 2015 to 2016, causing disruption and delays in the development and
 14 manufacture of IceMOS's Super Junction MOSFETs and its ability to meet customer
 15 demands. Such disruption and delays have detrimentally impacted IceMOS's existing
 16 and prospective business relationships by preventing IceMOS from developing its
 17 products, selling those products into the market, and timely delivering products to
 18 existing customers.

19 **ANSWER:** Omron denies the allegations in Paragraph 73.

20 74. Additionally, Omron has recently taken the position that the Supply
 21 Agreement does not require it to fully support IceMOS's Super Junction MOSFETs for
 22 three years, including one year of concurrent transfer support, but rather requires only
 23 two years of product support and one year of transfer support, which conflicts with
 24 Omron's duty to ensure uninterrupted supply in § 4.15 of the Supply Agreement.

25 **ANSWER:** Omron admits it has taken the position described in Paragraph 74.
 26 Omron denies the implication that it has only "recently" taken this position, as it has
 27 consistently taken this position as supported by the plain terms of Section 6.2 of the
 28 Supply Agreement. Omron denies that Section 4.15 of the Supply Agreement obligates

1 Omron to “ensure uninterrupted supply”; rather, Section 4.15—which speaks for
 2 itself—only requires Omron to “to take *all preventive measures listed in Exhibit H*
 3 necessary to provide continuous supply to IceMOS.” (Emphasis added.) Omron
 4 therefore denies that it has any duty to “ensure uninterrupted supply” beyond the
 5 obligations explicitly enumerated in Section 4.15 and Exhibit H of the Supply
 6 Agreement. Omron denies all other allegations in Paragraph 74.

7 75. Omron’s position has no merit. Under Omron’s interpretation, IceMOS
 8 would have agreed to a termination that would leave IceMOS with no ability to service
 9 its customers for a full year. IceMOS made no such agreement because that would kill
 10 the company. Because IceMOS Super Junction MOSFETs must be “designed in” to
 11 customer products, which products have a multi-year life cycle, a customer decision to
 12 include IceMOS Super Junction MOSFETs in its products in a device means IceMOS
 13 must commit to the customer that it can continuously supply the devices for the
 14 expected life of the products in which they are used. This is the nature of the
 15 microelectronics industry, and Omron had full knowledge of the life cycle and design-in
 16 processes when it courted IceMOS in 2007 and 2008, and when it entered the Supply
 17 Agreement in 2011. Omron’s claim that the Supply Agreement can be interpreted in that
 18 manner demonstrates its bad faith and malicious intent.

19 **ANSWER:** Omron denies the allegations in Paragraph 75.

20 76. Omron previously represented, in the December 9, 2015 meeting minutes,
 21 that it would fully support IceMOS’s Super Junction MOSFETs throughout the
 22 termination period. That representation was false.

23 **ANSWER:** Omron denies the allegations in Paragraph 76. The meeting minutes
 24 state only that Omron committed to “do [its] best to support *transfer activities and*
inventory build for Super Junction” products, which is not tantamount to a
 25 representation that Omron would “fully support IceMOS’s Super Junction MOSFETs
 26 throughout the termination period” beyond its obligations under the plain terms of the
 27 Supply Agreement. *See ECF No. 14-2, at p. 3 (emphasis added).*

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1 77. On or about May 9, 2017, Omron sent a letter to IceMOS indicating that it
 2 intends to cease all manufacture of IceMOS's Super Junction MOSFETs by July 2017.
 3 A true and correct copy of said letter is attached hereto as "Exhibit 3" and is
 4 incorporated by reference as if fully set forth herein.

5 **ANSWER:** Omron admits that Exhibit 3 is a true and correct copy of a letter
 6 Omron sent to IceMOS on or about May 9, 2017. Omron denies any allegations in
 7 Paragraph 77 inconsistent with the terms of the letter.

8 78. IceMOS has advised Omron of the detrimental impact of its efforts to
 9 improperly and prematurely terminate the Supply Agreement. Omron's continued
 10 efforts and plans to terminate the Supply Agreement have rendered IceMOS's supply
 11 chain uncertain and have inhibited IceMOS's ability to effectively and productively
 12 conduct its business. No customers will buy IceMOS's products without a qualified
 13 manufacturer identified, approved, and committed to manufacturing IceMOS's orders.

14 **ANSWER:** Omron denies the implication in Paragraph 78 that Omron has
 15 "improperly and prematurely terminate[d] the Supply Agreement." Omron lacks
 16 knowledge and information sufficient to form a belief regarding the remaining
 17 allegations in Paragraph 78 and therefore denies the same.

18 79. Additionally, IceMOS intends to make an initial public offering ("IPO")
 19 in 2018 with an expected valuation exceeding \$100,000,000.00, of which Omron is
 20 aware. Early termination of the Supply Agreement without proper notice has seriously
 21 and detrimentally affected IceMOS's ability to make its intended IPO in 2018 and/or
 22 will negatively impact the valuation thereof.

23 **ANSWER:** Omron lacks knowledge and information sufficient to form a belief
 24 as to whether IceMOS has an intention to make an initial public offering and therefore
 25 denies that allegation. Omron denies the remaining allegations in Paragraph 79.

26 80. Omron's past failures to satisfy its obligations under the Supply
 27 Agreement, its failure to provide proper notice of its intent to terminate the Supply
 28 Agreement, and its ongoing efforts to terminate the Supply Agreement early and

1 without proper support for IceMOS's products have caused, and will continue to cause,
 2 ongoing harm to IceMOS, including but not limited to, lost business opportunities, lost
 3 business reputation, and lost business valuation, for which IceMOS seeks redress, as
 4 follows:

5 **ANSWER:** Omron denies the allegations in Paragraph 80.

6 81. Based on the above facts, IceMOS brings this suit for the following causes
 7 of action: (i) breach of contract; (ii) breach of the implied duty of good faith and fair
 8 dealing; (iii) promissory estoppel, in the alternative; and (iv) fraud.

9 **ANSWER:** Omron denies liability under all causes of action described in
 10 Paragraph 81.

11 **COUNT I: BREACH OF CONTRACT**

12 82. IceMOS adopts and incorporates by reference all preceding paragraphs as
 13 if fully set forth herein.

14 **ANSWER:** Omron adopts and incorporates by reference its responses to all
 15 preceding paragraphs as if fully set forth herein.

16 83. The Supply Agreement is a valid and enforceable contract for breach of
 17 which IceMOS is a proper party to sue.

18 **ANSWER:** The allegations in Paragraph 83 are legal assertions as to which no
 19 response is required. To the extent an answer is required, Omron admits that the Supply
 20 Agreement was a valid contract until Omron properly exercised its early termination
 21 right.

22 84. At all relevant times, IceMOS fully performed, tendered performance of,
 23 and/or was excused from performing its contractual obligations under the Supply
 24 Agreement.

25 **ANSWER:** Omron denies the allegations in Paragraph 84. IceMOS materially
 26 breached the Supply Agreement and its implied covenant of good faith and fair dealing
 27 in the respects identified in Omron's counterclaims below. IceMOS was at no point

28

1 excused from performing any of its contractual obligations under the Supply
 2 Agreement.

3 85. IceMOS has invested millions of dollars in the performance of its
 4 contractual obligations under the Supply Agreement, including but not limited to,
 5 purchasing the DRIE etcher, purchasing numerous mask sets and silicon wafers for
 6 development and production, and hiring a dedicated team of Japanese engineers to work
 7 with Omron to facilitate the development and manufacturing of IceMOS's Super
 8 Junction MOSFETs.

9 **ANSWER:** Omron lacks knowledge and information sufficient to form a belief
 10 regarding the amount of money IceMOS has expended performing its obligations under
 11 the Supply Agreement. Omron therefore denies the allegations in Paragraph 85.

12 86. Omron has engaged in multiple breaches of the Supply Agreement,
 13 including but not limited to, failing and/or refusing to "fully resource the development of
 14 all generations of Super Junction MOSFETs;" failing and/or refusing to "share equally in
 15 the production mask costs (initial sets) applicable to the products;" attempting to
 16 improperly terminate the Supply Agreement without proper notice; and repudiating its
 17 obligations to support development and manufacture IceMOS's Super Junction
 18 MOSFETs throughout the three-year termination period.

19 **ANSWER:** Omron denies the allegations in Paragraph 86.

20 87. Omron's breaches of the Supply Agreement have caused, and will
 21 continue to cause, ongoing harm to IceMOS, including but not limited to, actual
 22 damages in the form of increased costs, loss of business due to delay in reaching the
 23 market, harm to IceMOS's business reputation due to inability to timely meet customer
 24 demands, loss of business opportunities due to uncertainty of supply, and impairment of
 25 IceMOS's valuation in advance of its planned IPO.

26 **ANSWER:** Omron denies the allegations in Paragraph 87.

27 88. The harm to IceMOS's business reputation, the impairment of its
 28 valuation, and the loss of business opportunities—in particular, the harms that have

1 arisen and will arise from Omron's improper termination and repudiation of its
 2 obligation to support IceMOS throughout the termination period—are not adequately
 3 recompensable by monetary damages. IceMOS does not have an adequate remedy at
 4 law to compensate it for such harms.

5 **ANSWER:** Omron denies the allegations in Paragraph 87.

6 89. The manufacturing processes for IceMOS's Super Junction MOSFETs are
 7 unique and were developed specifically for the Yasu Fab.

8 **ANSWER:** Omron denies the allegations in Paragraph 89.

9 90. Additionally, IceMOS purchased specialized manufacturing equipment at
 10 Omron's insistence and consigned such equipment to the Yasu Fab. Such equipment
 11 was specifically configured for Omron's facility and cannot be serviced outside of
 12 Japan.

13 **ANSWER:** Omron admits that IceMOS purchased specialized manufacturing
 14 equipment and consigned the equipment to the Yasu Fab. Omron admits that the
 15 equipment was configured for Omron's facility. However, Omron denies that it
 16 "insisted" that IceMOS purchase the equipment, which IceMOS obtained voluntarily.
 17 Omron further denies that the equipment cannot be serviced outside of Japan, as it may
 18 be serviced in other countries with minor modifications. Omron denies all other
 19 allegations in Paragraph 90.

20 91. Because of the unique manufacturing processes and specialized
 21 equipment, IceMOS cannot avoid the harm to its business reputation and loss of
 22 business by transferring manufacturing to another facility in time to avoid the harm.

23 **ANSWER:** Omron denies the allegations in Paragraph 91.

24 92. IceMOS has attempted in good faith to avoid and mitigate such harm and
 25 has been unable to locate a comparable facility with sufficient capacity and qualify it for
 26 customers within the time Omron has demanded. IceMOS has stood, and continues to
 27 stand, ready, willing, and able to perform its obligations under the Supply Agreement.

1 **ANSWER:** Omron denies that IceMOS has attempted in good faith to avoid or
 2 mitigate any harm and denies that IceMOS stands or previously stood “ready, willing,
 3 [or] able to perform its obligations under the Supply Agreement,” as IceMOS materially
 4 breached both the Supply Agreement and the implied covenant of good faith and fair
 5 dealing in multiple respects detailed in Omron’s counterclaims below. Omron lacks
 6 knowledge and information regarding whether IceMOS has been able to locate a
 7 comparable facility, and therefore also denies such allegations. Omron further denies
 8 the implication that Omron has “demanded” that IceMOS locate a comparable facility,
 9 as the Supply Agreement explicitly authorized Omron to terminate the Supply
 10 Agreement early.

11 93. Because of the immeasurable nature of the harm to IceMOS and the
 12 unique nature of the supply services under the Supply Agreement, IceMOS seeks
 13 specific performance of the Supply Agreement. Specifically, IceMOS seeks to have
 14 Omron continue manufacturing and supporting IceMOS’s Super Junction MOSFETs
 15 until the earlier of either February 28, 2021 or three years after the day proper written
 16 notice of termination is delivered in accordance with the Supply Agreement.

17 **ANSWER:** Omron denies that IceMOS has suffered any harm, let alone
 18 “immeasurable” harm, and denies that the supply services under the Supply Agreement
 19 are “unique.” Omron denies that IceMOS is entitled to specific performance.

20 94. In the alternative, to the extent that the court finds that the harm to
 21 IceMOS’s business reputation and valuation and the loss of business opportunities are
 22 recompensable by monetary damages, IceMOS seeks recovery of all actual damages
 23 suffered by it due to Omron’s multiple breaches of the Supply Agreement in an amount
 24 to be proven at trial, which amount IceMOS believes exceeds \$25,000,000.00.

25 **ANSWER:** Omron denies that IceMOS has suffered any of the harm described
 26 in Paragraph 94 or that it has sustained actual damages. Omron denies that IceMOS is
 27 entitled to recover any damages, let alone an amount in excess of \$25 million. Omron
 28 further denies breaching the Supply Agreement in any respect.

COUNT II: BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

95. IceMOS adopts and incorporates by reference all preceding paragraphs as if fully set forth herein.

ANSWER: No response to this allegation is required, as the Court dismissed this Count in its order dated July 6, 2018.

96. In addition to the breaches of contract stated above, Omron has breached its implied duty of good faith and fair dealing.

ANSWER: No response to this allegation is required, as the Court dismissed this Count in its order dated July 6, 2018.

97. The parties agreed that the Supply Agreement “shall be governed by and construed in all respects under the laws of New York, without regard to rules concerning conflicts of laws.” Supply Agreement, § 9.2.

ANSWER: No response to this allegation is required, as the Court dismissed this Count in its order dated July 6, 2018.

98. New York law holds that “in every contract there is an implied covenant that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract, which means that in every contract there exists an implied covenant of good faith and fair dealing.”

ANSWER: No response to this allegation is required, as the Court dismissed this Count in its order dated July 6, 2018.

99. The New York covenant of good faith and fair dealing implies in the Supply Agreement all promises that a reasonable person in the promisee's position would justifiably understand were included to ensure the promisee's expectations are not destroyed by the promisor's actions even if such actions are not specifically prohibited by the contract.

ANSWER: No response to this allegation is required, as the Court dismissed this Count in its order dated July 6, 2018.

1 100. As described in Paragraphs 35-41 above, Omron has taken actions that
 2 have prevented IceMOS from receiving the “fruits of the contract.” Such actions are
 3 separate and distinct from Omron’s various breaches of the Supply Agreement.

4 **ANSWER:** No response to this allegation is required, as the Court dismissed
 5 this Count in its order dated July 6, 2018.

6 101. Because of the unique manufacturing processes and specialized
 7 equipment, IceMOS cannot avoid the harm to its [sic] business reputation and loss of
 8 business by transferring manufacturing to another facility.

9 **ANSWER:** No response to this allegation is required, as the Court dismissed
 10 this Count in its order dated July 6, 2018.

11 102. IceMOS has attempted in good faith to avoid and mitigate such harm and
 12 has been unable to locate a comparable facility with sufficient capacity and qualify it for
 13 customers within the time Omron has demanded.

14 **ANSWER:** No response to this allegation is required, as the Court dismissed
 15 this Count in its order dated July 6, 2018.

16 103. Omron’s breaches of its covenant of good faith and fair dealing have
 17 damaged IceMOS by raising IceMOS’s costs to comply with the Supply Agreement.

18 **ANSWER:** No response to this allegation is required, as the Court dismissed
 19 this Count in its order dated July 6, 2018.

20 104. Omron’s breaches of its covenant of good faith and fair dealing have
 21 damaged IceMOS by harming its customer relations and damaging its goodwill.

22 **ANSWER:** No response to this allegation is required, as the Court dismissed
 23 this Count in its order dated July 6, 2018.

24 **COUNT III: PROMISSORY ESTOPPEL, IN THE ALTERNATIVE**

25 105. IceMOS adopts and incorporates by reference all preceding paragraphs as
 26 if fully set forth herein.

27 **ANSWER:** No response to this allegation is required, as the Court dismissed
 28 this Count in its order dated July 6, 2018.

1 106. Alternative to the foregoing cause of action for breach of contract, to the
 2 extent the Court finds that the Supply Agreement is unenforceable or that IceMOS is
 3 otherwise unable to recover thereunder, IceMOS brings this claim for promissory
 4 estoppel, seeking enforcement of Omron's promises.

5 **ANSWER:** No response to this allegation is required, as the Court dismissed
 6 this Count in its order dated July 6, 2018.

7 107. Omron made a promise to IceMOS. Specifically, Omron promised to
 8 manufacture and support IceMOS's Super Junction MOSFETs for a period of ten years
 9 unless earlier terminated upon three years' proper notice and support.

10 **ANSWER:** No response to this allegation is required, as the Court dismissed
 11 this Count in its order dated July 6, 2018.

12 108. IceMOS reasonably and substantially relied on this promise to its
 13 detriment by specifically tailoring its manufacturing processes to Omron's facility and
 14 investing substantial sums to facilitate development and manufacturing of its Super
 15 Junction MOSFETs at Omron's facility.

16 **ANSWER:** No response to this allegation is required, as the Court dismissed
 17 this Count in its order dated July 6, 2018.

18 109. IceMOS's reliance was reasonably foreseeable to Omron. Omron made
 19 the promise as an inducement for IceMOS to make use of Omron's manufacturing
 20 services.

21 **ANSWER:** No response to this allegation is required, as the Court dismissed
 22 this Count in its order dated July 6, 2018.

23 110. Injustice can only be avoided by enforcing Omron's promise to
 24 manufacture and support IceMOS's Super Junction MOSFETs for the promised term.

25 **ANSWER:** No response to this allegation is required, as the Court dismissed
 26 this Count in its order dated July 6, 2018.

27 111. Accordingly, IceMOS seeks to enforce Omron's promise by recovery of
 28 the damages suffered by IceMOS in reliance on Omron's promise, including but not

1 limited to, the depreciated value of the DRIE etcher and other equipment specifically
 2 purchased and consigned to Omron's wafer manufacture facility in reliance on Omron's
 3 promise.

4 **ANSWER:** No response to this allegation is required, as the Court dismissed
 5 this Count in its order dated July 6, 2018.

6 **COUNT IV: FRAUD**

7 112. *IceMOS adopts and incorporates by reference all preceding paragraphs*
 8 *as if fully set forth herein.*

9 **ANSWER:** Omron adopts and incorporates by reference its responses to all
 10 preceding paragraphs as if fully set forth herein.

11 113. At the March 6, 2015 meeting in Arizona, and again at the December 9,
 12 2015 meeting in Japan, Omron's employee, Yoshitake Ito, represented to IceMOS's
 13 Sam Anderson that Omron intended to fully support IceMOS's Super Junction
 14 MOSFETs. See, e.g., Exhibit 2 (including provisions for inventory build through March
 15 2017 and representation that Omron will "do [its] best to support transfer activities and
 16 inventory build for Super Junction").

17 **ANSWER:** Omron denies the allegations in Paragraph 113. Exhibit 2 states
 18 only that Omron will do its best "to support *transfer activities and inventory build* for
 19 Super Junction," which is all that is required under the Supply Agreement. Exhibit 2
 20 does not state "that Omron intended to fully support IceMOS's Super Junction
 21 MOSFETs" as Paragraph 113 incorrectly asserts. *See ECF No. 14-2, at p. 3 (emphasis*
 22 *added).*

23 114. This representation was material to the negotiations over Omron's
 24 attempts to improperly terminate the Supply Agreement.

25 **ANSWER:** Omron denies the allegations in Paragraph 114. Omron denies that
 26 it "attempt[ed] to improperly terminate the Supply Agreement," as Omron validly
 27 terminated the Supply Agreement in March 2015. Because the termination was valid, no
 28

1 representation Omron made could have been “material to the negotiations” over the
 2 termination.

3 115. This representation was false because Omron has indicated it will not
 4 fully support IceMOS’s Super Junction MOSFETs through the termination period but
 5 will provide only transfer support for one year of the termination period.

6 **ANSWER:** Omron denies the allegations in Paragraph 115.

7 116. When Omron made the representation, it either knew that it had no intent
 8 to fully support IceMOS’s Super Junction MOSFETs throughout the termination period
 9 or made the representation as a positive assertion with reckless disregard to its truth or
 10 falsity.

11 **ANSWER:** Omron denies the allegations in Paragraph 116.

12 117. Omron made its representation as part of the negotiations over its
 13 admittedly improper termination efforts with the intent that IceMOS rely on the
 14 representation as the parties sought a business solution to their impasse.

15 **ANSWER:** Omron denies the allegations in Paragraph 117.

16 118. IceMOS did, in fact, rely on the representation in its decision to attempt to
 17 mitigate damages by looking for an alternative manufacturing facility and to work in
 18 good faith with Omron despite Omron’s improper termination efforts.

19 **ANSWER:** Omron denies that IceMOS has “work[ed] in good faith with
 20 Omron” and denies that its termination efforts were “improper.” Omron lacks sufficient
 21 knowledge and information to form a belief regarding IceMOS’s efforts to look for an
 22 alternative manufacturing facility, and therefore denies such allegations. Omron denies
 23 all other allegations contained in Paragraph 118.

24 119. IceMOS did not know, nor did it have reason to know, that Omron’s
 25 representation was false.

26 **ANSWER:** Omron denies the allegations in Paragraph 119.

27 120. Omron’s fraudulent misrepresentation has caused, and continues to cause,
 28 harm to IceMOS by rendering its supply chain uncertain and impairing IceMOS’s

1 ability to effectively and profitably conduct business, develop products, qualify
 2 production for customers, and service customers, for which IceMOS seeks to recover
 3 actual damages in an amount to be proven at trial.

4 **ANSWER:** Omron denies the allegations in Paragraph 120.

5 121. IceMOS requests that the Court enter a preliminary injunction against
 6 Omron enjoining Omron from ceasing to manufacture IceMOS's Super Junction
 7 MOSFETs or providing IceMOS less support than Omron provides for its own
 8 manufacturing during the pendency of this suit. Good cause exists for such relief in that
 9 there is a substantial likelihood that IceMOS will succeed on its claim for breach of
 10 contract and will suffer irreparable harm in the absence of an injunction.

11 **ANSWER:** Omron denies that IceMOS is entitled to any injunctive relief, let
 12 alone the injunctive relief described in Paragraph 121, and denies that good cause exists
 13 for injunctive relief. Omron denies that there is a substantial likelihood that IceMOS
 14 will succeed on its breach of contract claim or any of its other claims. Omron denies
 15 that IceMOS will suffer irreparable harm in the absence of an injunction. Omron denies
 16 all other allegations in Paragraph 121.

17 122. There is a substantial likelihood that IceMOS will succeed on its claim for
 18 breach of contract in that Omron has admitted and acknowledged that it did not comply
 19 with the three-year notice period. During the December 9, 2015 meeting Omron
 20 acknowledged that its attempted notice on March 6, 2015 was less than three years prior
 21 to the termination date. Exhibit 2, p. 1.

22 **ANSWER:** Omron denies the allegations in Paragraph 122.

23 123. Further, Omron has never provided IceMOS with written notice of early
 24 termination that conforms to the notice requirements set forth in the Supply Agreement.

25 **ANSWER:** Omron denies the allegations in Paragraph 123.

26 124. In the absence of an injunction, IceMOS is substantially likely to suffer
 27 irreparable harm. The loss of its manufacturer would prevent IceMOS from satisfying

1 its commercial obligations, causing IceMOS to lose customers and suffer damage to its
 2 business reputation.

3 **ANSWER:** Omron denies the allegations in Paragraph 124.

4 125. Such harm to its business would not be recompensable by an award of
 5 monetary damages.

6 **ANSWER:** Omron denies that IceMOS faces any harm to its business, much
 7 less harm that “would not be recompensable by an award of monetary damages.”

8 126. Further, such harm outweighs any potential injury to Omron from being
 9 enjoined. Requiring Omron to continue manufacturing IceMOS’s Super Junction
 10 MOSFETs in accordance with the Supply Agreement that Omron voluntarily entered
 11 will not cause Omron irreparable harm comparable to the loss of business reputation,
 12 business opportunities, and business valuation faced by IceMOS in the absence of such
 13 injunction.

14 **ANSWER:** Omron denies the allegations in Paragraph 126.

15 127. Finally, the public interest would not be disserved by enjoining Omron as
 16 the public has an interest in contracts being enforced and in parties satisfying their
 17 contractual obligations. Enjoining Omron to comply with the obligations it voluntarily
 18 accepted serves this interest and does not run counter to any other public interest.

19 **ANSWER:** Omron admits that “the public has an interest in contracts being
 20 enforced and in parties satisfying their contractual obligations,” but denies that granting
 21 injunctive relief here would serve such interest, as it is IceMOS, not Omron, that has
 22 failed to satisfy its contractual obligations. Omron denies all other allegations in
 23 Paragraph 127.

24 128. For these reasons, IceMOS requests that the Court enjoin Omron from
 25 ceasing to manufacture IceMOS’s Super Junction MOSFETs or providing less support
 26 to IceMOS than Omron contracted to provide during the pendency of this suit.

27 **ANSWER:** Omron denies that IceMOS is entitled to the relief described in
 28 Paragraph 128.

1 **AFFIRMATIVE DEFENSES**

2 Omron gives notice that it may rely upon the following affirmative defenses to
 3 the claims set forth in the Complaint. Omron does not hereby assume the burden of
 4 proof on such defenses that would otherwise rest on IceMOS. Omron incorporates by
 5 reference, as if fully set forth herein, each of the factual averments contained in the
 6 Answer above, as well as the allegations contained in the Counterclaims that follow.

7 **FIRST AFFIRMATIVE DEFENSE**

8 IceMOS's claims are barred in whole or in part due to IceMOS's failure to
 9 minimize or mitigate its damages. IceMOS never obtained a replacement for Omron's
 10 foundry services after Omron exercised its contractual right to terminate the Supply
 11 Agreement. By asserting this defense, Omron preserves its denial of liability and its
 12 denial of the existence of damages.

13 **SECOND AFFIRMATIVE DEFENSE**

14 IceMOS's claims are barred to the extent that IceMOS seeks to recover damages
 15 incurred outside of the termination notice period. By asserting this defense, Omron
 16 preserves its denial of liability and its denial of the existence of damages.

17 **THIRD AFFIRMATIVE DEFENSE**

18 IceMOS's claims are barred in whole or in part because IceMOS has acted in bad
 19 faith by providing Omron grossly overstated demand forecasts. Indeed, as set forth in
 20 Omron's Counterclaims, IceMOS ordered a mere 2.2% of the wafers that it projected
 21 would be ordered in pre-contractual negotiations.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 IceMOS's claims are barred in whole or in part because IceMOS's material
 24 breach(es) of the Supply Agreement excused Omron from performing under the Supply
 25 Agreement.

26 **FIFTH AFFIRMATIVE DEFENSE**

27 IceMOS's claims are barred in whole or in part, by express and/or implied
 28 consent granted (and/or authorized to be granted) by IceMOS.

SIXTH AFFIRMATIVE DEFENSE

IceMOS's claims are barred in whole or in part by the equitable doctrines of waiver, acquiescence, release, unclean hands, and/or estoppel.

SEVENTH AFFIRMATIVE DEFENSE

IceMOS's claims are barred on the ground that IceMOS excused Omron from one or more of Omron's duties to perform under the Supply Agreement.

EIGHTH AFFIRMATIVE DEFENSE

8 IceMOS's claims are barred in whole or in part because Omron validly
9 terminated the Supply Agreement by its own terms, thereby excusing Omron from
10 performing thereunder.

NINTH AFFIRMATIVE DEFENSE

IceMOS's claims are barred in whole or in part by the doctrine of laches.

TENTH AFFIRMATIVE DEFENSE

IceMOS's claims are barred to the extent that IceMOS seeks damages or other relief for actions taken outside the applicable statute of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

17 As described more fully in the Counterclaims below, Omron has affirmative
18 claims against IceMOS. As a result, Omron has a right to set-off against IceMOS in the
19 event Omron is ultimately found liable to IceMOS. By asserting this defense, Omron
20 preserves its denial of liability and its denial of the existence of damages.

TWELFTH AFFIRMATIVE DEFENSE

Any award of punitive damages against Omron would be unconstitutional as violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Excessive Fines Clause of the Eighth Amendment to the United States Constitution. By asserting this defense, Omron preserves its denial of liability and its denial of the existence of damages.

THIRTEENTH AFFIRMATIVE DEFENSE

IceMOS's claims are barred on the ground that the Court lacks personal jurisdiction over Omron.

FOURTEENTH AFFIRMATIVE DEFENSE

IceMOS's claims are barred in whole or in part by the doctrine of unconscionability.

FIFTEENTH AFFIRMATIVE DEFENSE

Omron hereby reserves the right to amend its affirmative defenses to add any defenses not alleged herein, in the event discovery uncovers previously unknown facts supporting such defenses.

COUNTERCLAIMS

Defendant/Counter-Plaintiff Omron Corporation (“Omron”), for its complaint against Plaintiff/Counter-Defendant IceMOS Technology Corporation (“IceMOS”), states as follows:

The Parties

1. IceMOS is a Delaware corporation with its principal place of business in Arizona.

2. Omron is a Japanese corporation with its principal place of business in Japan.

Jurisdiction

3. The Court may exercise personal jurisdiction over IceMOS because IceMOS has availed itself of this Court's jurisdiction by filing its Complaint against Omron in the District of Arizona.

4. The Court may exercise subject matter jurisdiction over Omron's counterclaims. Omron's counterclaims arise out of the same common nucleus of operative fact as the claims IceMOS asserts against Omron in its First Amended Complaint. The Court may also exercise diversity jurisdiction over Omron's

1 counterclaims because this action is between a United States entity and a foreign entity
 2 and the matter in controversy exceeds \$75,000.

3 **The Supply Agreement**

4 5. On February 28, 2011, Omron and IceMOS entered into a Supply
 5 Agreement, a copy of which is filed at ECF No. 14-1.

6 6. Pursuant to the Supply Agreement, Omron agreed to manufacture, and
 7 IceMOS agreed to purchase, super junction metal oxide semiconductor field-effect
 8 transistors (“Super Junction MOSFETs”). *See generally* Supply Agreement.

9 7. The Supply Agreement specifies that “[p]ayment will be made by
 10 IceMOS to OMRON at net sixty (60) days [end-of-month (“EOM”)].” *Id.* § 4.4.

11 8. Section 4.3.1 of the Supply Agreement provides: “In order to permit
 12 OMRON to plan for the manufacture of wafers reasonably in line with the estimated
 13 demand of IceMOS[,] IceMOS shall provide OMRON a monthly rolling forecast of its
 14 estimated demand for wafers over the next twelve (12) months.”

15 9. To date, Omron has performed all of its obligations under the Supply
 16 Agreement, except those which have been excused by IceMOS.

17 **IceMOS Provides Omron Grossly Inaccurate Demand Forecasts**

18 10. Based on IceMOS’s representations of robust demand for Super Junction
 19 MOSFETs, the “Background” section of the Supply Agreement states that “[d]emand
 20 for IceMOS Super Junction MOSFETs is estimated to reach a volume of up to three
 21 thousand and five hundred (3,500) wafers per month by year 2014.” *Id.* at p. 1.

22 11. Based on IceMOS’s representations regarding the expected demand for
 23 Super Junction MOSFETs, the parties appended a volume forecast as an exhibit to the
 24 Supply Agreement, which states that monthly demand would reach 3,850 wafers per
 25 month by the fourth quarter of 2012. *See id.* at p. 13.

26 12. In reliance on these fraudulently and/or recklessly inflated projections,
 27 Omron agreed to enter into the Supply Agreement with IceMOS.

1 13. Both before and during the term of the Supply Agreement, IceMOS
2 supplied Omron with demand forecasts indicating that IceMOS would order more than
3 240,000 wafers under the Supply Agreement between 2011 and 2017. However, such
4 demand forecasts dramatically inflated the true amount of wafers IceMOS would come
5 to order.

6 14. Had IceMOS ordered more than 240,000 wafers as it represented to
7 Omron would be expected under the Supply Agreement, Omron would have earned
8 approximately \$108 million in revenue.

9 15. Notwithstanding IceMOS's demand forecasts, demand for Super Junction
10 MOSFETs was nowhere near the levels IceMOS represented to Omron.

16. Despite IceMOS's demand forecast of several thousands of wafers to be
ordered in 2011, IceMOS did not order a single wafer that year.

17. Despite IceMOS's demand forecast of tens of thousands of wafers to be
18 ordered in 2012, IceMOS ordered only a few hundred in 2012.

18. In all, IceMOS ordered only 5,202 wafers between 2011 and 2017—a
mere 2.2% of the forecasted demand figures IceMOS provided to Omron.

17 19. IceMOS's failure to fulfill its forecasted demand rendered the contract
18 supremely unprofitable for Omron. Omron spent millions of dollars in development
19 pursuant to the Supply Agreement that Omron has never recovered as a result of
20 IceMOS's failure to fulfill its forecasted demand.

21 | IceMOS Repeatedly Fails to Pay its Invoices on Time

20. As noted above, Section 4.4 of the Supply Agreement specifies that
21 “[p]ayment will be made by IceMOS to OMRON at net sixty (60) days EOM.”

24 21. Throughout the duration of the Supply Agreement, IceMOS habitually
25 failed to pay its invoices within the timeframe specified by Section 4.4 of the Supply
26 Agreement. To name just a few representative examples:

a. IceMOS was 27 days late in paying an invoice due on December 31, 2013.

- 1 b. IceMOS was 153 days late in paying an invoice due on January 31, 2014.
- 2 c. IceMOS was 125 days late in paying an invoice due on
- 3 February 28, 2014.
- 4 d. IceMOS was 122 days late in paying an invoice due on March 31, 2014.
- 5 e. IceMOS was 92 days late in paying an invoice due on April 30, 2014.
- 6 f. IceMOS was 93 days late in paying an invoice due on May 31, 2014.
- 7 g. IceMOS was 79 days late in paying an invoice due on June 30, 2014.
- 8 h. IceMOS was 48 days late in paying an invoice due on July 31, 2014.
- 9 i. IceMOS was 17 days late in paying an invoice due on August 31, 2014.
- 10 j. IceMOS was 15 days late in paying an invoice due on
- 11 September 30, 2014.
- 12 k. IceMOS was 102 days late in paying an invoice due on October 31, 2014.
- 13 l. IceMOS was 72 days late in paying an invoice due on
- 14 November 30, 2014.
- 15 m. IceMOS was 43 days late in paying an invoice due on
- 16 December 31, 2014.

17 22. Each of these failures to timely pay outstanding invoices, along with other
 18 similar failures to timely pay invoices not here listed, amounted to a material breach of
 19 the Supply Agreement and injured Omron.

IceMOS Fails to Pay Other Invoices Entirely

21 23. On August 8, 2016, IceMOS instructed Omron to begin production on
 22 three lots of Super Junction MOSFETs pursuant to the Supply Agreement.

23 24. Under IceMOS's direction, Omron commenced and completed production
 24 on each lot, only to have IceMOS subsequently place the Super Junction MOSFETs on
 25 hold.

26 25. On October 12, 2016, at IceMOS's direction, Omron then shipped two of
 27 the three held lots and issued IceMOS Invoice No. MD161012IO16052401, pursuant to
 28 which IceMOS was obligated to pay Omron \$23,500.

1 26. On October 21, 2016, at IceMOS's direction, Omron shipped the third
 2 held lot of Super Junction MOSFETs and issued IceMOS Invoice No.
 3 MD161021IO16060301, pursuant to which IceMOS was obligated to pay Omron
 4 \$11,750.

5 27. IceMOS accepted these lots without protest or complaint at the time they
 6 were shipped.

7 28. Pursuant to Section 4.4 of the Supply Agreement, IceMOS was obligated
 8 to pay Invoice No. MD161012IO16052401 and Invoice No. MD161021IO16060301 by
 9 the end of December 2016. *See Supply Agreement § 4.4 (“Payment will be made by*
 10 *IceMOS to OMRON at net sixty (60) days EOM.”).*

11 29. IceMOS did not pay the outstanding invoices by the due date set by
 12 Section 4.4 of the Supply Agreement.

13 30. It was not until November 30, 2016, long after IceMOS had already
 14 received and accepted the replacement lots, that IceMOS first claimed it was not
 15 obligated to pay for the products.

16 31. IceMOS insisted it was entitled to “return” the lots due to “delays” in the
 17 manufacturing process. However, the Supply Agreement does not permit IceMOS to
 18 return lots as a result of alleged manufacturing delays. It only permits IceMOS to reject
 19 lots which are “found to fail the ‘Design Specification’ per Exhibit A for a given device
 20 title,” *id.* § 4.9—a provision inapplicable to the lots in question.

21 32. To date, IceMOS has not paid either of the outstanding invoices noted
 22 above.

23 33. To date, IceMOS retains possession of the lots that are the subject of the
 24 unpaid invoices.

25 34. As a result, Omron has been forced to write off the substantial production
 26 costs of three lots of Super Junction MOSFETs specifically ordered, placed on hold, and
 27 subsequently requested and received by IceMOS.

LAW OFFICES
GREENBERG TRAURIG
 2375 EAST CAMELBACK ROAD, SUITE 700
 PHOENIX, ARIZONA 85016
 (602) 445-8000

CAUSES OF ACTION

35. Based on the above facts, Omron asserts the following causes of action against IceMOS.

COUNT I

Breach of the Implied Covenant of Good Faith and Fair Dealing

36. Omron incorporates by reference Paragraphs 1 through 35 as if fully stated herein.

37. The Supply Agreement was a valid and enforceable contract before Omron validly exercised its option to terminate it.

10 38. The Supply Agreement imposed a duty of good faith and fair dealing upon
11 IceMOS.

39. While the parties were negotiating the Supply Agreement, IceMOS forecasted that monthly demand for Super Junction MOSFET wafers would reach 3,850 wafers per month by the fourth quarter of 2012.

40. IceMOS indicated that it would order more than 240,000 wafers for Super Junction MOSFETs between 2011 to 2017.

17 41. Based on that representation, the parties memorialized that forecast in the
18 Supply Agreement itself. *See* Supply Agreement, Ex. A.

19 42. Omron justifiably understood that IceMOS would order a quantity of
20 Super Junction MOSFET wafers reasonably close to the forecasted demand figures that
21 IceMOS supplied to Omron.

22 43. IceMOS breached its duty of good faith and fair dealing by ordering only
23 2% of the forecasted quantity of Super Junction MOSFET wafers.

24 44. IceMOS's failure to order a quantity of Super Junction MOSFET wafers
25 coming anywhere close to its forecasted demand figures deprived Omron of its right to
26 receive the fruits of the Supply Agreement.

27 45. IceMOS's breach of its duty of good faith and fair dealing proximately
28 caused Omron to recognize only approximately \$2 million in revenue from the Supply

1 Agreement, rather than the approximately \$108 million in revenue Omron would have
2 earned had IceMOS ordered a quantity of Super Junction MOSFETs approximating the
3 forecasted demand figures IceMOS supplied to Omron.

4 46. As a proximate cause of IceMOS's failure to order a quantity of Super
5 Junction MOSFET wafers anywhere close to the demand figures IceMOS provided to
6 Omron, Omron has been unable to recoup the millions of dollars in development costs it
7 expended under the Supply Agreement.

8 47. IceMOS's breach of its duty of good faith and fair dealing proximately
9 caused Omron damages, which include, but are not limited to (i) the revenue Omron
10 would have realized if IceMOS had not provided Omron grossly overinflated demand
11 forecasts; (ii) the development costs which Omron has been unable to recoup as a result
12 of IceMOS's breach; and (iii) the legal fees Omron has incurred as a result of IceMOS's
13 breach.

COUNT II

Breach of Contract – Failure to Timely Make Payments

16 48. Omron incorporates by reference Paragraphs 1 through 47 as if fully
17 stated herein.

18 49. The Supply Agreement was a valid, enforceable, and binding contract
19 before Omron properly exercised its option to terminate it.

20 50. To date, Omron has performed all of its obligations under the Supply
21 Agreement, except those which have been excused as a result of IceMOS's material
22 breaches.

51. The Supply Agreement obligated IceMOS to pay its invoices net of sixty
days end-of-month (“EOM”). See Supply Agreement § 4.4.

25 52. IceMOS materially breached the Supply Agreement by failing to make
26 multiple payments by the sixty day EOM deadline, including but not limited to the late
27 payments described in Paragraph 21 above.

53. No circumstances exist which would have excused IceMOS from paying its invoices within the timeframe established by Section 4.4 of the Supply Agreement.

54. IceMOS's breaches of the Supply Agreement caused Omron to sustain damages, including, but not limited to (i) damages resulting from IceMOS's failure to make the required payments in a timely manner; and (ii) the legal fees Omron has incurred as a result of IceMOS's breaches.

COUNT III

Breach of Contract – Failure to Pay Invoices

55. Omron incorporates by reference Paragraphs 1 through 54 as if fully stated herein.

56. The Supply Agreement was a valid, enforceable, and binding contract before Omron properly exercised its option to terminate it.

57. To date, Omron has performed all of its obligations under the Supply Agreement, except those which have been excused as a result of IceMOS's material breaches.

58. The Supply Agreement obligated IceMOS to pay Invoice No. MD161012IO16052401 and Invoice No. MD161021IO16060301 by the end of December 2016. *See Supply Agreement § 4.4.*

59. IceMOS materially breached the Supply Agreement by failing to pay Invoice No. MD161012IO16052401 and Invoice No. MD161021IO16060301 by the deadline established by Supply Agreement § 4.4.

60. To date, IceMOS has not paid Invoice No. MD161012IO16052401 or Invoice No. MD161021IO16060301, yet IceMOS retains possession of the products which are the subject of those invoices.

61. IceMOS's breaches of the Supply Agreement caused Omron to sustain damages, including but not limited to (i) the amount of the invoices which remains unpaid, (ii) damages resulting from IceMOS's failure to make the required payments in

1 a timely manner; and (iii) the legal fees Omron has incurred as a result of IceMOS's
 2 breach.

3 **COUNT IV**

4 **Fraud in the Inducement**

5 62. Omron incorporates by reference Paragraphs 1 through 61 as if fully
 6 stated herein.

7 63. While the parties were negotiating the Supply Agreement, IceMOS
 8 represented to Omron its forecast that monthly demand for Super Junction MOSFET
 9 wafers would reach 3,850 wafers per month by the fourth quarter of 2012.

10 64. During negotiations, IceMOS also represented to Omron that monthly
 11 demand for Super Junction MOSFETs would remain at a forecasted volume of up to
 12 3,500 wafers per month by the year 2014.

13 65. IceMOS repeatedly presented Omron with forecasts drastically above its
 14 intended orders throughout the parties' relationship under the Supply Agreement.

15 66. IceMOS's fraudulent forecasts were material to Omron's decision to enter
 16 the Supply Agreement and to manufacture Super Junction MOSFETs for IceMOS, as
 17 Omron would not have entered an agreement to produce only 5,202 Super Junction
 18 MOSFETs over a six-year period.

19 67. IceMOS indicated that between 2011 and 2017, it would order more than
 20 240,000 wafers for Super Junction MOSFETs under the Supply Agreement.

21 68. IceMOS's representations concerning its forecasts were false and
 22 misleading, forecasting a need for approximately 98% more wafers than IceMOS
 23 actually ordered under the Supply Agreement.

24 69. IceMOS knew such statements and forecasts were false at the time they
 25 were made, or at a minimum, acted with reckless disregard of the statements' truth and
 26 viability.

27 70. IceMOS made its forecasts with the intent that Omron rely upon the
 28 numbers IceMOS represented therein, and to induce Omron into a manufacturing

1 relationship. Omron did in fact rely upon IceMOS's forecasts in entering the Supply
2 Agreement and agreeing to manufacture Super Junction MOSFETs for IceMOS
3 pursuant to the Supply Agreement's specifications.

4 71. Omron was unaware of the falsity of IceMOS's statements at the time
5 Omron acted in reliance thereon, and justifiably understood that IceMOS would order a
6 quantity of Super Junction MOSFET wafers reasonably close to its forecasted demand
7 figures.

8 72. IceMOS's representations caused Omron to enter the Supply Agreement,
9 caused Omron to manufacture Super Junction MOSFETs for IceMOS, and precluded
10 Omron from engaging in other lucrative manufacturing opportunities.

11 73. IceMOS's representations have caused Omron to sustain damages,
12 including but not limited to (i) damages resulting from lost business opportunities in
13 which Omron could have reasonably engaged using the time and resources expended to
14 support IceMOS's Super Junction MOSFET wafers pursuant to the Supply Agreement;
15 (ii) manufacturing costs to prepare its facilities to handle a volume of more than
16 240,000 units, and (iii) the legal fees Omron has incurred as a result of IceMOS's
17 fraudulent inducement.

DEMAND FOR JURY TRIAL

19 Pursuant to Federal Rule of Civil Procedure 38, Omron hereby demands a trial
20 by jury on all issues triable to a jury.

PRAYER

WHEREFORE, having fully answered IceMOS's Complaint and having set forth the foregoing Counterclaims, Omron prays for judgment as follows:

- 24 (a) That IceMOS take nothing by way of the Complaint; and

25 (b) That the Court enter judgment for Omron and against IceMOS for breach
26 of the Supply Agreement, breach of the implied covenant of good faith
and fair dealing, and fraud in the inducement in an amount to be
27 determined at trial, plus any further relief at law or in equity to which
Omron may show itself to be entitled.

1 RESPECTFULLY SUBMITTED this 16th day of July, 2018.
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4 GREENBERG TRAURIG, LLP
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7 By: /s/ Nicole M. Goodwin
8 Nicole M. Goodwin
9 Matthew A.C. Zapf*
10 Jonathan H. Claydon*
11 *Pro Hac Vice
12 *Attorneys for Defendant Omron Corporation*
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LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 700
PHOENIX, ARIZONA 85016
(602) 445-8000

CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2018, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Robert D. Atkins
PATENT LAW GROUP: Atkins and Associates, P.C.
55 North Arizona Place, Suite 104
Chandler, Arizona 85225
main@plgaz.com

Michael W. Shore
Alfonso G. Chan
Paul T. Beeler
SHORE CHAN DEPUMPO LLP
901 Main Street, Suite 3300
Dallas, Texas 75202
mshore@shorechan.com
achan@shorechan.com
pbeeler@shorechan.com

/s/ *Carla Martin*

LAW OFFICES
GREENBERG TRAURIG
2375 EAST CAMELBACK ROAD, SUITE 7000
PHOENIX, ARIZONA 85016
(602) 445-8000